

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS,

Complainant,

v.

STEWART BUILDERS, LLC,

Respondent.

CASE NO. OSH 2006-25

ORDER NO. 220

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by conference call by the Hawaii Labor Relations Board ("Board") on November 15, 2006, and attended by Herbert B.K. Lau, Deputy Attorney General, for Complainant, and Troy Stewart, Owner, for Respondent, IT IS HEREBY ORDERED THAT:

1. The issues to be determined at trial are as follows:
  - A. Whether Respondent violated 29 CFR 1926.501(b)(13), as found in Citation 1, Item 1, because "[t]wo employees installing roof sheathing were not protected from fall hazards. The fall protection plan option was not applicable because it was not infeasible to use conventional fall protection."
  - B. Respondent raises the defense that the "two employees were not able to properly tie off yet because the roof system did not yet have an anchorage point that would be able to support 5,000 lbs."
  - C. Whether Respondent violated 29 CFR 1926.501(b)(13), as found in Citation 1, Item 1, because "[a]n employee standing on the second floor top plate was not protected from fall hazards. The employee should have been utilizing a ladder positioned on the second floor to perform the work on the rafters instead of standing on the top plate."
  - D. Respondent raises as a defense that the "employee was installing a hip rafter. He was unable to utilize a ladder positioned on the second

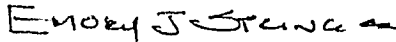
floor because this would have caused a greater hazard. He would have needed both hands in order to position the rafter and nail it down therefore making the ladder unstable. The ladder would have had to be placed directly below the rafter making the worker unstable do [sic] to leaning over the side of the ladder.”

- E. Whether the \$6,000.00 penalty is proper.
2. The deadline for the parties’ final naming of witnesses is February 5, 2007.
  3. The deadline for the parties’ final naming of expert witnesses and the exchange of expert reports is February 5, 2007.
  4. The discovery cutoff date is March 5, 2007.
  5. Trial in this matter is scheduled for March 27, 2007, at 9:30 a.m., or as soon thereafter as this case can be heard, in the Board’s hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed.
  6. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, November 16, 2006.

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chair

  
EMORY J. SPRINGER, Member

  
SARAH R. HIRAKAMI, Member

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. STEWART  
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NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Robyn Kuwabe, Deputy Attorney General  
Troy Stewart, Owner